

STD

**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:08-cv-02337-NVW
Internal Use Only**

Cygnus Systems, Inc. v. Microsoft
Corporation, et al
Assigned to: Judge Neil V Wake
Cause: 28:1338 Patent Infringement

Date Filed: 12/23/2008
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

Cygnus Systems, Inc.

Pat. # 7,346,850

represented by **Peter C Warner**

Peter C Warner PC
1723 W 4th St
Tempe , AZ 85281-2404
480-894-6500
Fax: 602-798-8279
Email:
pcw@warnerpatents.com
*ATTORNEY TO BE
NOTICED*

V.

Defendant

Microsoft Corporation

Defendant

Apple Inc.

Defendant

Google Inc.

Date Filed	#	Docket Text
12/23/2008	<u>1</u>	COMPLAINT. Filing fee received: \$ 350.00, receipt number 09700000000002456298, filed by Cygnus Systems, Inc.. (Attachments: # <u>1</u> Exhibit A)(Warner, Peter) (Entered: 12/23/2008)
12/23/2008	<u>2</u>	Corporate Disclosure Statement by Cygnus Systems, Inc.. (Warner, Peter) (Entered: 12/23/2008)
12/23/2008	<u>3</u>	SUPPLEMENT of Civil Cover Sheet & Summonses re <u>1</u> Complaint by Plaintiff Cygnus Systems, Inc.. (Attachments: # <u>1</u> Summons Microsoft, # <u>2</u> Summons Google, # <u>3</u> Summons Apple)(Warner, Peter) (Entered: 12/23/2008)
12/23/2008		This case has been assigned to the Honorable Neil V. Wake. All future pleadings or documents should bear the correct case number: CV 08-2337-PHX-NVW. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (Entered by REK) (Entered: 12/24/2008)
12/23/2008	<u>4</u>	Notice re Magistrate Consent Form (REK) (Entered: 12/24/2008)
12/24/2008	<u>5</u>	Summons Issued as to Microsoft Corporation, Apple Inc., Google Inc. (Attachments: # <u>1</u> Apple Inc., # <u>2</u> Google Inc.)(REK). *** IMPORTANT: You must select "Document and stamps" or "Document and comments" on the print screen in order for the court seal to appear on the summons you print. (Entered: 12/24/2008)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CYGNUS SYSTEMS, INC.

(b) County of Residence of First Listed Plaintiff Maricopa
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Peter C. Warner, Esq., 1723 W. 4th St., Tempe, AZ 85281-2404
Tel.: (480) 894-6500

DEFENDANTS

MICROSOFT CORPORATION, APPLE INC.,
and GOOGLE INC.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 USC § 271

Brief description of cause:

Alleged Patent Infringement of U.S. Patent No. 7,346,850

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/23/2008

SIGNATURE OF ATTORNEY OF RECORD

/s/ Peter C. Warner

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

1 Peter C. Warner (Ariz. State Bar #009338)
1723 W. 4th Street
2 Tempe, AZ 85281-2404
Tel.: (480) 894-6500
3 Fax: (602) 798-8279
pcw@warnerpatents.com
4

5 Attorney for Plaintiff

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Cygnus Systems, Inc.
9 Plaintiff,

Case No. 2:08-cv-2337-NVW

10 vs.

11 Microsoft Corporation; Apple Inc.; and
12 Google Inc.,
13 Defendants.

14 **PLAINTIFF'S LRCiv 7.1.1**
15 **CORPORATE DISCLOSURE STATEMENT**

16 Pursuant to LRCiv 7.1.1 and Federal Rule of Civil Procedure 7.1, plaintiff,
17 Cygnus Systems, Inc., states that it does not have any parent corporations and
18 that no publicly held company or investment fund holds a 10% or more interest
19 in plaintiff.
20

21 PETER C. WARNER, P.C.

22 By: /s/ Peter C. Warner
23 Peter C. Warner
24
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1 Peter C. Warner (Ariz. State Bar #009338)
1723 W. 4th Street
2 Tempe, AZ 85281-2404
Tel.: (480) 894-6500
3 Fax: (602) 798-8279
pcw@warnerpatents.com
4

5 Attorney for Plaintiff

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Cygnus Systems, Inc.
9 Plaintiff,

Case No.

10 vs.

11 Microsoft Corporation; Apple Inc.; and
12 Google Inc.,
13 Defendants.

JURY TRIAL DEMANDED

14 **COMPLAINT FOR PATENT INFRINGEMENT**

15 Plaintiff, Cygnus Systems, Inc., complains of defendants, Microsoft
16 Corporation ("Microsoft"), Apple Inc. ("Apple"), and Google Inc. ("Google"), as
17 follows:

18 1. This is a claim for patent infringement arising under the patent laws
19 of the United States, Title 35 of the United States Code. This Court has exclusive
20 jurisdiction over the subject matter of this case under 28 U.S.C. § 1338(a).

21 2. Cygnus Systems, Inc. is an Arizona corporation that has a principal
22 place of business at 40117 N. High Noon Way, Anthem, Arizona 85086. Cygnus
23 owns United States Patent No. 7,346,850 ("the '850 Patent"), entitled "System and
24 Method for Iconic Software Environment Management," which issued on
25 March 18, 2008 (Exhibit A), and has the exclusive right to license and enforce the
26 '850 Patent and to collect all damages for infringement of such patent. Cygnus
27 also has standing to sue for infringement of the '850 Patent.
28

1 3. Microsoft Corporation is a Washington corporation with its
2 principal place of business at One Microsoft Way, Redmond, Washington 90852.
3 Defendant Microsoft transacts business in this judicial district and has
4 committed acts of infringement in this judicial district, at least by advertising,
5 selling, and offering to sell the products at issue in this case for use or download
6 throughout this judicial district and which infringe one or more claims of the
7 '850 Patent.

8 4. Apple Inc. is a California corporation with a principal place of
9 business at 1 Infinite Loop, Cupertino, California 95014. Defendant Apple
10 transacts business in this judicial district and has committed acts of infringement
11 in this judicial district, at least by advertising, selling, and offering to sell the
12 products at issue in this case throughout this judicial district and which infringe
13 one or more claims of the '850 Patent.

14 5. Google Inc. is a Delaware corporation with a principal place of
15 business at 1600 Ampitheater Parkway, Mountain View, California 94043.
16 Defendant Google transacts business in this judicial district and has committed
17 acts of infringement in this judicial district, at least by operating its Google.com
18 website and by advertising, selling, and offering to sell the products at issue in
19 this case for use or download throughout this judicial district and which infringe
20 one or more claims of the '850 Patent.

21 6. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b).

22 **PATENT INFRINGEMENT**

23 7. The '850 Patent generally relates to methods of and systems for
24 accessing one or more computer files via a graphical icon, wherein the graphical
25 icon includes an image of a selected portion or portions of the one or more
26 computer files.
27
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1 8. Microsoft has infringed one or more claims of the '850 Patent at
2 least by making, using, selling, and offering for sale its Vista operating system
3 and Vista's accompanying iconic file preview and access functionality.

4 Microsoft has further infringed one or more claims of the '850 Patent at least by
5 making, using, selling, and offering for sale its Internet Explorer 8 web browser
6 and Internet Explorer 8's accompanying iconic file preview and access
7 functionality.

8 9. Apple has infringed one or more claims of the '850 Patent at least by
9 making, using, selling, and offering for sale its Mac OS X Leopard ("Leopard")
10 operating system and Leopard's accompanying "Finder" and "Cover Flow"
11 features, which include iconic file preview and access functionality. Apple has
12 further infringed one or more claims of the '850 Patent at least by making, using,
13 selling, and offering for sale its iPhone and iPhone's accompanying iconic file
14 preview and access functionality, including but not limit to the iconic file
15 preview and access functionality of iPhone's main menu and Safari Internet
16 browser applications.

17 10. Google has infringed one or more claims of the '850 Patent at least
18 by making, using, selling, and offering for sale Google's Chrome web browser
19 and Chrome's accompanying iconic file preview and access functionality.

20 11. Defendants' infringement has injured plaintiff Cygnus and it is
21 entitled to recover damages adequate to compensate it for such infringement,
22 but in no event less than a reasonable royalty.

23 WHEREFORE, plaintiff Cygnus respectfully requests this Court enter
24 judgment against defendants Microsoft Corporation, Google Inc., and Microsoft
25 Corporation., individually and jointly, and against their subsidiaries, successors,
26 parents, affiliates, officers, directors, agents, servants, employees, and all
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1 persons in active concert or participation with them, granting the following
2 relief:

- 3 A. The entry of judgment in favor of plaintiff, and against each of the
4 defendants;
5 B. An award of damages adequate to compensate plaintiff for the
6 infringement that has occurred, together with prejudgment interest
7 from the date the infringement began, but in no event less than a
8 reasonable royalty as permitted by 35 U.S.C. § 284;
9 C. A finding that this case is exceptional and an award to plaintiff of its
10 attorneys' fees and costs as provided by 35 U.S.C. § 285;
11 D. A permanent injunction prohibiting further infringement of the '850
12 Patent; and,
13 E. Such other relief that plaintiffs is entitled to under law and any
14 other and further relief that this Court or a jury may deem just and
15 proper.
16

17 **Jury Demand**

18 Plaintiff requests a trial by jury on all issues presented in this Complaint.

19 PETER C. WARNER, P.C.
20

21 By: /s/ Peter C. Warner
22 Peter C. Warner
 Attorney for Plaintiff

23 **OF COUNSEL**

24 Raymond P. Niro
25 Lee F. Grossman
26 Matthew G. McAndrews
27 Anna B. Folgers
28 Niro, Scavone, Haller & Niro
181 West Madison, Suite 4600
Chicago, Illinois 60602
Tel: (312) 236-0733
Fax: (312) 236-3137